



United States
Department of
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Food and
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Service

Mountain
Plains
Region

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Denver, CO 80204

Reply to
Attn. of: SP 94-C-3

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Subject: Procurement Handbook

To: STATE AGENCY DIRECTORS - Colorado ED, Iowa, Kansas, Missouri ED,
(Special Nutrition Programs) Montana OPI, Nebraska ED, North Dakota,
South Dakota, Utah, Wyoming ED

Attached are two copies of a PROCUREMENT HANDBOOK we have developed for your information and use. Please contact us if you have any questions about the handbook.

Ann C. Hector

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Regional Director
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Attachments: Procurement Handbook (2)

CHILD NUTRITION PROGRAMS
PROCUREMENT HANDBOOK

Prepared by:
Mountain Plains Regional Office
Special Nutrition Programs
Food and Nutrition Service
U.S. Department of Agriculture

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PREFACE

This procurement handbook is designed to serve two purposes. First, it is written to interpret for State Agencies in the Mountain Plains Region the various Federal regulations which govern procurement procedures in Child Nutrition Programs using Federal funds. Second, the handbook is designed to assist State Agencies in developing training programs and technical assistance materials for administrators of Child Nutrition Programs so that proper procurement regulations can be implemented at the local level.

The first part of this handbook briefly explains the basic requirements and components of Federal procurement regulations. The handbook then describes the various procurement methods which may be used. The concept of a written procurement plan is discussed; and finally, we have included some of the more common questions and answers, as well as a glossary of terms.

The handbook is not meant to replace any State or local guidelines which require more restrictive procurement actions. Local administrators of Child Nutrition Programs should be advised to use their own procurement procedures which reflect applicable State and local laws, provided that the procurements for the Child Nutrition Programs conform to the standards described in this handbook.

Large parts of this handbook are based on the work of a task force of State and local officials and food industry representatives convened several years ago by Food and Nutrition Service's Regional Office in Atlanta, Georgia.

TABLE OF CONTENTS

- I. Procurement Policy**
 - A. Competition
 - B. Comparability
 - C. Documentation
 - D. Other Procurement System Components
- II. Procurement Methods**
 - A. Small Purchase Procedures
 - B. Competitive Sealed Bids
 - C. Competitive Negotiation
 - D. Noncompetitive Negotiation
- III. Procurement Plans**
- IV. Questions and Answers**
- V. Glossary of Terms**

I. PROCUREMENT POLICY

This handbook is intended to assist State Agencies in providing guidance for local administrators of Child Nutrition Programs, which includes the following:

National School Lunch Program

School Breakfast Program

Special Milk Program

Child and Adult Care Food Program

Summer Food Service Program

It should also be noted that State Agencies, themselves, should follow the general principals outlined in this handbook when making procurements using Federal funds such as State Administrative Expense funds.

The specific regulatory citations on which this handbook is based are:

7 CFR 210.21

7 CFR 215.14a

7 CFR 220.16

7 CFR 225.17

7 CFR 226.22

The above regulations are based on U.S. Department of Agriculture's Uniform Federal Assistance Regulations 7 CFR 3015 - Subpart S - Procurement.

Part 3015 is in turn, based on Attachment O, "Procurement Standards," of Office of Management and Budget Circulars A-102 and A-110.

The regulations and circulars provide principles to be used by administrators of programs or grants utilizing Federal funds in general and Child Nutrition Programs funds in particular. The various principles may be summarized into four areas for discussion: Competition, Comparability, Documentation, and some other items.

A. COMPETITION

One of the primary purposes of Federal procurement regulations is to assure that open and free competition exists to the maximum extent possible. Part 3015 and Attachment O both state that, **"ALL PROCUREMENT TRANSACTIONS, REGARDLESS OF WHETHER BY SEALED BIDS OR BY NEGOTIATION AND WITHOUT REGARD TO DOLLAR VALUE SHALL BE CONDUCTED IN A MANNER THAT PROVIDES MAXIMUM OPEN AND FREE COMPETITION."**

Competition is mandated so that Program goods, equipment, and services will be obtained at the lowest possible cost. All procurements must be made through competition. The actual type of procurement method used is of secondary importance. Of primary importance is that open and free competition exists when procurements are made.

The procurement procedures used by Administrators of Child Nutrition Programs must not restrict or eliminate competition. Furthermore, care should be taken to prevent bidders from limiting competition among themselves. Some examples of what is considered to restrict competition either by the administering organization or by bidders are:

1. **Placing unreasonable requirements on firms in order for them to qualify to do business.**

Examples of unreasonable requirements are excessive bid bonds, unreasonable delivery schedule requirements or unnecessarily high experience requirements.

2. **Noncompetitive practices between firms.**

These are practices between firms that attempt to limit competition. This type of collusion is difficult to detect, unless obvious information comes to the forefront. It should be noted that any or all bids or quotes may be rejected when there are sound documented business reasons to do so, and it is in the best interest of the Program.

3. Organizational conflict of interest.

This is also a practice that may be difficult to detect. For example, this may occur when a parent company and one of its subsidiaries are the only companies contacted for competitive negotiation.

B. COMPARABILITY

In order to assure that true competition is taking place, identical specifications, identical requests for bids or identical requests for proposals must be furnished to the potential vendors. All pertinent data, such as required delivery schedules, quantities, product specification, and purchase conditions, etc., must be made available to these potential vendors. Only when the bids and quotes are for identical specifications, can quotes and bids be compared to determine the lowest and best price.

Administrators of Child Nutrition Programs must perform some form of cost or price analysis in connection with every procurement action. This analysis can only take place when costs or prices are based on the same set of specifications and conditions.

C. DOCUMENTATION

Administrators of Child Nutrition Programs must maintain records to detail the significant aspects of their procurements. These records include, but are not limited to the following:

1. Reasons for selecting the method of procurement used in specific purchases or types of purchases.

This requirement need not be as burdensome as it may first appear. A one-time adoption of a Procurement Plan or policy by the organization may fulfill this requirement. The plan or policy could define the organization's plan for using the various procurement methods for the different items to be procured. For example, the organization may specify in its plan its reason for purchasing milk and bread on a competitive sealed bid basis, fresh produce on a weekly small purchase basis, canned goods and frozen foods on a small purchase basis, etc. A more complete discussion of the use of a procurement plan is given in Section III.

2. Contractor selection or rejection.

Along with the price analyses, other comparisons or evaluations of the potential contractor or bidder are in order. All selection factors/criteria should be stated in the request for bids, quotes, or proposals. Awards must be made only to responsible vendors that possess the ability to perform successfully under the terms and conditions of a proposed procurement. Consideration should be given to:

- a. financial and technical resources
- b. vendor integrity
- c. record of past performance (documentation of past failures that have been brought to the attention of the vendor and not corrected)
- d. compliance with public policy (as in the case of equal opportunity compliance or compliance with pertinent Environmental Protection Agency regulations)

Administrators of Child Nutrition Programs must document the reason for selecting or rejecting a vendor. If the lowest bid price is not the determining factor, written justification must be maintained showing why one vendor was more beneficial than another to the Program.

Any or all bids may be rejected when there are sound business reasons in the best interest of the Program. This must also be documented.

3. Selection of contract type, if applicable.

- a. Generally, a fixed cost contract based on unit price is given.
- b. Cost reimbursement-type contracts are seldom used. If used, written documentation should indicate the reason(s) this was beneficial to the Program.
- c. Contracts with escalation clauses are used by some organizations, especially for long term contracts such as milk, ice cream and bread. Records should indicate why this type of contract was chosen. See the "Question and Answer" Section for more information on escalation clauses.

- d. Cost-plus-a-percentage-of-costs contracts are not permitted.
- e. Cost-plus-a-percentage-of-income contracts are not permitted.

4. **Basis for the cost or price in negotiated contracts.**

If the lowest offered bid is accepted, this can be documented in a simple sentence, or may already be documented in the records kept under the current formal bidding or quotation process. More documentation would generally be required when using a negotiation method. In addition to cost or price, the other factors evaluated which led to the selection must be addressed. See the section on competitive negotiation for further information.

D. **OTHER PROCUREMENT SYSTEM COMPONENTS**

In addition to the major requirements that are summarized in the previous sections, the procurement regulations also establish other standards and guidelines for the procurement of supplies, equipment and services in the Program. These standards and guidelines are furnished to ensure that such materials and services are efficiently and economically obtained and in compliance with the provisions of applicable Federal law.

1. **Code of Conduct**

The entity administering Child Nutrition Programs must maintain a written code or standard of conduct which governs the performance of its officers, employees or agents who are engaged in the award and administration of contracts supported by Program funds. The written code must include the following principles:

- a. No employee, officer or agent of the entity shall participate in selection or in the award or administration of a contract supported by Program funds if a conflict of interest, real or apparent, would be involved.

Conflicts of interest may arise when any of the following has a financial or other interest in the firm selected for the award:

- (1) The employee, officer, or agent;
- (2) any member of his or her immediate family;

- (3) his or her partner;
 - (4) an organization which employs, or is about to employ, any of the above.
- b. The organization's officers, employees, or agents shall neither solicit nor accept gratuities, favors or anything of monetary value from contractors, potential contractors, or parties to subagreements.
- The State Agency or the administering organization may set minimum rules where the financial interest is not substantial or the gift is an unsolicited item of nominal intrinsic value.
- c. As permitted by law or regulations, State Agencies or local organizations shall provide for penalties, sanctions, or other disciplinary actions for violations of these standards by officers, employees or their agents, or by the contractors or the contractor agents.

2. Contracting with Small and Minority Firms, Women's Business Enterprises and Labor Surplus Area Firms

To the extent possible, efforts must be made to include small, minority, women's and labor surplus area firms on the solicitation list. These firms must be solicited when they are potential sources for purchased goods and services. When economically feasible, total requirements must be divided into small quantities and delivery requirements or schedules established to permit maximum participation by these firms.

When indicated, the services of the Small Business Administration and the Office of Minority Business Enterprise of the Department of Commerce should be used. Having the State Agency make initial contacts with these agencies to determine what further action might need to be taken by organizations administering Child Nutrition Programs could be helpful.

3. Contract Provisions

In addition to the standards described in the previous sections, there are contract provisions or conditions that are required to be included in all contracts or subcontracts funded by the Child Nutrition Programs. This includes procurements of food, equipment, and supplies, as well as services. A list of those requirements is given below. Some are applicable to only those contracts which are over \$10,000 and some are applicable to those contracts which are over \$100,000.

a. Contracts over \$10,000

- (1) "Contracts other than small purchases shall contain provisions or conditions which will allow for administrative, contractual, or legal remedies in instances where contractors violate or breach contract terms and provide for such sanctions and penalties as may be appropriate."

This means that all contracts over the \$10,000 amount ("other than small purchases") must have a paragraph or more that spells out the benefits to which the administering organization will be entitled, if the contractor can not or will not perform as required in the contract.

- (2) "All contracts in excess of \$10,000 shall contain suitable provisions for termination by the grantee including the manner by which it will be effective and the basis for settlement. In addition, such contracts shall describe conditions under which the contract may be terminated for default because of circumstances beyond the control of the contractor."

This means the contract must spell out the conditions under which the administering organization could terminate the contract before it expires.

- (3) All contracts in excess of \$10,000 by grantees and their contractors or subgrantees shall contain a provision requiring compliance with Executive Order 11246, entitled "Equal Employment Opportunity" as amended by Executive Order 11375, and as supplemented in Department of Labor regulations (41 CFR Part 60).

b. Contracts over \$100,000

Contracts over \$100,000 must contain a provision which requires compliance with all applicable standards, orders, or requirements issued under Section 306 of the Clean Air Act (42 U.S.C. 1857 (h)), Section 508 of the Clean Water Act (33 U.S.C. 1368), Executive Order 11738, and Environmental Protection Agency regulations (40 CFR Part 15), which prohibit the use under non-exempt Federal contracts, grants or loans of facilities included on the EPA List of Violating Facilities. The provision shall require reporting of violations to USDA and to the U.S.E.P.A. Assistant Administrator for Enforcement.

II. **PROCUREMENT METHODS**

There are four basic procurement methods. Each is described in detail in this section. Using the correct procurement method will assist in assuring that necessary goods and services are procured at the lowest cost and with the greatest benefit to the Program. Open and free competition must prevail to the extent possible regardless of the method used. There are no hard and fast rules about when to use one or the other of these methods, although there are guiding principles. These principles should be observed in determining which method is most appropriate.

A. SMALL PURCHASE PROCEDURES

Small purchase procedures are those relatively simple and informal methods that are sound and appropriate for any item of food supplies, equipment or services which do not total more than \$10,000 on an annual basis. There is an exception to this \$10,000 threshold: fresh produce may be purchased under the "small purchase" procedures, regardless of dollar amount.

Free and open competition must prevail when using small purchase procedures. For example, the items or services to be purchased must be adequately and consistently described for each prospective vendor so that each one can provide price quotes on the same merchandise or service. The description must contain all the requirements which the vendor must fulfill and all the factors to be used in evaluating the vendor responses.

This can be done by either written or verbal "requests for quotations." The request would describe the various items and/or service the administering organization wishes to purchase. Responses can be either written or verbal. Price quotations thus secured must be maintained by the organization.

An adequate number of qualified sources must be contacted to provide such quotes. In some rural or isolated areas, there may be only one vendor willing to provide goods and services to an administering organization. On the other hand it may be necessary in a large metropolitan area to limit the number of potential vendors to a manageable number. Therefore, the term, "adequate number" is determined by local market conditions.

B. COMPETITIVE SEALED BIDS

Competitive sealed bids (formal advertising) are publicly solicited and a firm-fixed-price contract (lump sum or unit price) is awarded to the responsible bidder whose bid is lowest in price. The bidder's response needs to conform with all the terms and conditions of the invitation for bid in order to be considered.

In order for the competitive sealed bid procedure to be feasible, these conditions must be present:

1. A complete, adequate and realistic specification or purchase description is available.
2. Two or more responsible suppliers are willing and able to compete effectively for the business.
3. The procurement lends itself to a firm-fixed-price contract. This means the selection of a successful bidder can appropriately be made principally on the basis of price.

If it is determined after reviewing the conditions that competitive sealed bidding is appropriate, the following requirements must be met:

1. The invitation to bid must be publicly advertised.
2. Bids must be solicited from an adequate number of known suppliers, in sufficient time prior to the date set for the opening of the bids.
3. The invitations for bid must clearly define the items or services needed in order for the bidders to be able to properly respond. This includes product specifications and general purchasing conditions.
4. All bids must be opened publicly at the time and place stated in the invitations for bid.

5. A firm-fixed-price contract award must be made by written notice to the responsible bidder whose bid is lowest, assuming the bid conforms to the requirements in the invitation for bid. If the award is to be made on a basis other than the lowest price per item, the method of award must be clearly described in the general conditions.
6. Where specified in the bidding documents, factors such as discounts, transportation costs and life cycle costs (for equipment), if applicable, shall be considered in determining which bid is lowest.
7. Payment discounts may only be used to determine the low bid when prior experience of the administering organization indicates that such discounts are generally taken.
8. Any and all bids may be rejected when there are sound documented reasons in the best interest of the program.

C. COMPETITIVE NEGOTIATION

Competitive negotiation can be used when competitive sealed bidding would not be appropriate. It is often used when the award cannot be made principally on the basis of cost. Proposals are requested, but they are not awarded on a simple total cost basis.

Competitive negotiation is commonly used for the acquisition of professional services. However, it can be used for the procurement of food products in a rapidly changing market, as in the case of a crop disaster. It is appropriate when the selection of a contractor cannot be made principally on the basis of price because adequate specifications cannot be developed to formally advertise the requirement. In the negotiated process, technical considerations are considered. Consideration is also given to other factors, including the offeror's proposed methodology, related experience and qualifications of the staff proposed.

The solicitation document used in negotiated procurements is referred to as a Request for Proposal (RFP). Offerors respond to an RFP by submitting both a technical and a cost proposal. These proposals are evaluated by a team of experts in accordance with evaluation factors, which are cited in the RFP. Award is made to the offeror whose technical and cost proposal combined is the offer most advantageous to the administering organization.

If competitive negotiation is used for a procurement, the following conditions must be met:

1. Proposals must be solicited from an adequate number (at a minimum, two) of qualified sources to permit reasonable competition.
2. The request for proposals must be publicized and reasonable requests by other sources to compete must be honored to the maximum extent possible.
3. The request for proposal must identify all significant evaluation factors including price or cost where required and their relative importance.
4. The administering organization must provide a mechanism for technical evaluation of the proposals received, to determine which responsible offerors will be further contacted for the purpose of further written and verbal discussions, and selection for contract award.
5. The contract must be awarded to the responsible offeror whose proposal is most advantageous to the administering organization when price and other factors are considered. Either a fixed-price or a cost-reimbursable type contract may be awarded. For food and supply items, a unit price contract is usually awarded.

This method requires a significant amount of procurement expertise.

D. NONCOMPETITIVE NEGOTIATION or SOLE SOURCE PROCUREMENT

Noncompetitive negotiation is procurement through solicitation of a proposal from only one source, or after solicitation of a number of sources, competition is determined to be inadequate. Noncompetitive negotiation can be used only when the procurement is not feasible under small purchase procedures, competitive sealed bidding or competitive negotiation procedures.

Circumstances under which a procurement may be made by noncompetitive negotiation are limited to the following:

1. The item is available only from a single source.
2. A public emergency exists and the urgency of the requirement will not permit the delay involved with competitive bidding or negotiation.
3. After solicitation from a number of sources, competition is found to be lacking.

In summary, noncompetitive negotiation can only be used when other procurement methods are not feasible. This decision must be justified in writing and available for audit and review.

III. PROCUREMENT PLANS

It is recommended that all entities administering Child Nutrition Programs develop and follow a formal Procurement Plan.

A procurement plan or policy statement can be advantageous for two reasons. It can serve to clarify the procurement practices of an organization for the benefit of the entire staff involved and, secondly, it can serve as the documentation for using the various methods of procurement: small purchasing procedures, competitive sealed bidding, competitive negotiation or noncompetitive negotiation.

The procurement plan should justify the reasons for using a certain procurement method to obtain an item. A procurement plan is an option that an organization may use to reduce its paperwork. If such a plan is developed by an administering organization, then only exceptions to the policy would need additional documentation to justify the procurement method used. Notes dated and signed, attached to purchase orders or invoices could be sufficient for such a purpose.

The scope of the plan would depend on the organization of the entity. If procurement is centralized, the plan would apply to the entire entity. If procurement is decentralized, the plan may apply to all units responsible for purchasing or each unit may be permitted to develop its own plan. A procurement plan would not need to be developed every year. However, an annual review of the plan, to assure its relevance to current procedures, is suggested.

Some examples of how the plan could be used to justify the method of procurement chosen are given below:

1. "All items, except milk, used in the food service operation will be procured using the small purchase procedures. Except for milk, no single item being procured will cost more than \$10,000 in total for the school year. Small purchase procedures will include obtaining at least two price quotations on items being procured. To assure a fair comparison of prices, descriptions or specifications and bid forms for commonly used items like canned goods, frozen foods and cleaning supplies will be furnished to all four potential area vendors along with other firms who request this material."
2. "Milk will be procured by competitive sealed bid on an annual basis. An escalation clause that is directly tied to the State wholesale price is allowable."

3. "All canned goods will be procured using the small purchase method, since no item is purchased in an amount greater than \$10,000 per year. Quotes will be obtained from three vendors by mailing specifications to them at the beginning of every two-month period. The vendor having the lowest aggregate cost (cost per item times expected usage) will be the successful bidder."
4. "Incidental office supplies will be purchased from one of three office supply/stationers in the area. At the beginning of each quarter, the food service manager, or designee, will survey the prices of 8-10 standard items at each of the three vendors, and supplies will be purchased from the vendor with the lowest overall prices for the next quarter."

IV. QUESTIONS AND ANSWERS

Q: When is competitive procurement required?

A: All procurements must be competitive to the extent feasible. No matter what method of procurement is used (small purchase procedures, competitive negotiation, competitive sealed bids or noncompetitive negotiation) competition must prevail, unless documentation is available to justify that this was not possible.

Q: When is the small purchase method of procurement not appropriate?

A: The small purchase procedures should not be used when purchase will exceed \$10,000 in the aggregate. As indicated earlier, the small purchase method is appropriate for fresh produce.

Q: What is meant by the term, "\$10,000, or more, in the aggregate"?

A: An administering organization may consider the \$10,000 amount as an annual amount. The \$10,000 threshold may apply to any one of three criteria, according to the decision of the organization. These are:

- 1. Singular items of food or supplies or equipment;*
- 2. Groups of items, like frozen vegetables or canned vegetables; or*
- 3. Total amount of food and supplies used in the food service operation.*

Q: Does the \$10,000 threshold apply to the entire organization or just to each school/center/site?

A: It applies to the organization performing the procurement function. If procurement is centralized, the \$10,000 threshold would apply on an organization-wide basis. If procurement is delegated to each site, then the \$10,000 threshold would be measured on a site basis.

Q: If we elect to choose the individual item as the basis for determining the \$10,000 threshold, does this mean that competitive sealed bids must be used as the procurement method for those items costing over \$10,000 a year?

A: Not necessarily. The procurement regulations also provide guidance on when competitive sealed bidding is feasible. The following appropriate conditions must be present:

1. A complete, adequate and realistic specification or purchase description is available.
2. Two or more responsible suppliers are willing and able to compete effectively for the business.
3. The procurement lends itself to a firm fixed-price contract. This means the selection of a successful bidder can appropriately be made principally on the basis of price.

Sometimes the organization's service requirements (e.g. delivery capabilities) or other factors may prevent bids being awarded principally on the basis of price.

Q: *What kind of competitive bidding could be used when competitive sealed bids are not entirely appropriate?*

A: A type of competitive negotiation could be used that includes a public request for proposals. This procedure is described under the section titled "Competitive Negotiation."

Q: *It appears that an administering organization should be using competitive sealed bidding for milk and ground beef. However, in a de-centralized system, there may be no one on the staff who has the time or the responsibility to oversee such a procedure. How should this be handled?*

A: Many organizations do not currently have a system in place to purchase food and food service materials on a competitive sealed bidding basis. This handbook sets forth standards for open and competitive purchasing toward which we should be moving. The standards should be met in order to assure that products are being obtained at the lowest cost to the program. Each State Agency should review procurement practices at the local level and assist the local administering organization to move into compliance with the standards of the Procurement regulations. Until such time as the organization can move into full compliance, it should adhere to the three major requirements of competition, comparability and documentation. A procurement plan is strongly recommended.

Q: *Will it be more expensive to purchase food and supplies under competitive sealed bidding, especially if additional staff must be hired?*

A: Any full or part-time staff hired to perform the purchasing function should be expected to save more dollars annually than their salary costs. Experience has shown that wise purchasing practices will pay for themselves. If this does not happen, the situation should be reviewed, perhaps with State Agency assistance.

Additionally, current personnel resources should be examined to see if they can be used. In some organizations, formal procurement actions are already taking place for items like gasoline, tires, etc. The same staff can sometimes be used for the food service operation, by providing food specifications, delivery schedules, and technical assistance.

Q: *What if a school or sponsoring organization gets the chance to purchase a food item at a much lower than expected cost? Since time is so important for these kinds of purchases, how could they possibly go through the competitive procedures required?*

A: In the food industry, it is common practice to occasionally have an item offered at a very low price because of a surplus situation. An organization should not have to pass up these kinds of opportunities. However, open and competitive purchasing procedures can still be maintained, for example, by phone contacts that are documented.

Consider the following example. Distributor XYZ calls saying that 200 cases of tomatoes are available at a price far below the accepted bid price of Distributor ABC. You can still use the minimum number of cases agreed to in the contract with Distributor ABC and you can use the additional 200 cases.

Using the same specification that Distributor XYZ provided as a description of the offered tomatoes, contact other suppliers by phone to check their prices for the identical goods. If indeed Distributor XYZ's proposal is too good to pass up, make the purchase.

You will need to document your contacts and the price quotations received.

Q: *Are escalation clauses allowed in contracts?*

A: Escalation clauses are allowed in contracts. To safeguard the Program, two provisions should be included. One, the increase or decrease in price should be tied to some index outside of the control of the vendor; for example, the State wholesale price of milk. Two, the contract should stipulate a maximum price or other condition which would allow the organization to terminate the contract and initiate other procurement actions to obtain the needed product.

Q: *Can brand names be used in our specification?*

A: When it is impractical or not economical to make a clear and accurate description of the product to be procured, a "brand name or equal" description can be used. The specific features of the named brand which must be met, must be clearly stated. For example, a specific brand of taco shell might be desirable not only because of taste and texture, but also because of their resistance to breakage on the serving line. A specification could be written specifying a particular brand of shell, "or equal in terms of taste, texture and resistance to breakage on the serving line." It would be the responsibility of a vendor to demonstrate that another brand of shell meets the desired features.

Another approach would be to document through taste testing that one particular brand is so clearly preferable to others that the procurement specifications can simply call for that brand. The documentation should spell out how the test was conducted, what other brands were tested, and how the test results influenced the final choice. Also, such tests should be repeated periodically.

Q: *The spouse of the food service director of an organization operating one of the Child Nutrition Programs has recently accepted a position as an officer in a wholesale food distributing company. Should the company be disqualified as a bidder for future contracts with the organization?*

A: Not necessarily, but this organization needs to be doubly careful to document its entire food procurement process. Vendor selection criteria should be made as objective as possible, and the final decision should involve officials other than the food service director.

Q: *In the operation of the National School Lunch Program, can a school food authority purchase prepared lunches from a neighboring school food authority without soliciting competitive bids from the private sector or other school food authorities?*

A: Yes

Q: *Are administering organizations required to competitively bid a personal service contract to hire a food service consultant?*

A: The procurement of services is subject to the same principles as the procurement of food, equipment, supplies, etc. The specific method of procurement may vary depending on circumstances, but an element of competition is required.

Q: *Some States have laws which require State and local government entities (such as schools) to give preference to in-State companies bidding to provide goods or services to such entities. Do the Child Nutrition Program procurement regulations prohibit such preferential treatment?*

A: No. USDA's Office of General Counsel has determined that such preferential treatment is permissible.

V. GLOSSARY OF TERMS

BID

A formal notice by the contractor or vendor to the buyer of the conditions and price under which he will furnish the equipment, supplies, or services set forth in the specifications.

CHILD NUTRITION PROGRAM

Any of the following: National School Lunch Program, School Breakfast Program, Special Milk Program, Child and Adult Care Food Program, or Summer Food Service Program.

COMPARATIVE PRICING

An examination of prices offered by vendors to determine the comparative difference in a standard unit (e.g. cases, pounds, cost per serving or singular equipment item).

COMPETITIVE NEGOTIATION

A method of procurement used when competitive sealed bidding is determined to be inappropriate because factors other than price must be considered. This method can be used when factors other than simple total cost weigh heavily in the determination of the most advantageous proposal.

COMPETITIVE SEALED BIDDING

A method of procurement in which competitive sealed bids (formal advertising) are publicly solicited and a firm-fixed-price contract (lump sum or unit price) is awarded to the lowest and most responsible bidder.

CONTRACT

A written agreement between two or more competent parties to perform or not to perform a specific act or acts for monetary/legal consideration.

COST PER SERVING

The total cost of a food or food item divided by the number of servings.

COST REIMBURSABLE CONTRACT

A contract basing payment on invoices of cost submitted by the vendor. This type of contract should not be executed, unless the administering organization has an accurate system to validate costs.

DOCUMENTATION

Written or printed records serving as proof or supporting references of the price and general requirements of a procurement. Records such as quotes, bids, invoices, and receiving documents may serve as documentation in the procurement process.

ESCALATION CLAUSE

A clause in a purchase contract providing for an up or down adjustment of the contract price if specified contingencies occur.

FIXED PRICE CONTRACT

A contract which provides for a firm price; the contractor bears the full responsibility for profit or loss.

FOOD SERVICE MANAGEMENT COMPANY

Generally, a commercial enterprise, a nonprofit organization, or a public entity which is or may be contracted with by an administering organization to manage any aspect of the organization's Child Nutrition Program(s).

Under the Child and Adult Care Food Program a Food Service Management Company is defined as "...an organization other than a public or private nonprofit school, with which an institution may contract for preparing and, unless otherwise provided for, delivering meals, with or without milk for use in the Program."

NON-COMPETITIVE NEGOTIATION

A method of procurement through solicitation of a proposal from only one source, or after solicitation of a number of sources, competition is determined to be inadequate. This method can be used only when procurement is not feasible under small purchase procedures, competitive sealed bidding, or competitive negotiation procedures.

PROCUREMENT (Purchasing, Buying)

The process of obtaining goods or services, including all activities from the preparation and processing of a requisition, through receipt and approval of the final invoice for payment. The acts of preparing specifications, making the purchase, and administering the contract are involved.

PROCUREMENT METHOD

The specific procedure involved in obtaining goods and services. There are four procurement methods: small purchase procedures, competitive sealed bidding, competitive negotiation, and non-competitive negotiation.

PROCUREMENT PLAN

A statement of policy or plan of operation which defines an organization's plan for using the various procurement methods for the different items to be procured. The reasons for selecting a certain method should be clearly stated. The plan should address these three key aspects of procurement: competition, comparability, and documentation.

PURCHASE CONDITIONS

Descriptive information in the administering organization's terms and conditions of the proposed procurement. It can include: type of items the bid is to cover, contract period, date, time, and location of bid opening (if applicable), a list of sites and their addresses, how and when awards will be made, quantities to be purchased, transportation terms, etc.

PURCHASING

The act of procuring supplies, equipment, or services of the right quality, at the right time, at the right price, and from the right source.

QUOTE

A formal or informal, but documented, notice by a vendor to the buyer of the conditions and price under which the vendor will furnish certain equipment, supplies or services.

RESPONSIBLE BIDDER

A vendor who is qualified by experience and equipped to perform the work required or furnish the materials indicated in the specification and who has the necessary financial backing and ability to complete the contract.

SMALL PURCHASE PROCEDURES

Those relatively simple and informal methods that are sound and appropriate for food, supplies, equipment or services which are not normally more than \$10,000 on an annual basis. Measures must be in effect to ensure free and open competition.

SPECIFICATION

A description of equipment, supplies, or services setting forth in a clear and concise manner the characteristics of the item to be purchased (Product specification), and the conditions under which the purchase will be made (purchase conditions).